ALLTEL CORPORATION
601 Pennsylvania Avenue, N.W.
Suite 720
Washington, DC 20004
202-783-3970
202-783-3982 fax

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 29, 1999

Magalie Roman Salas, Secretary
Federal Communication Commission
445 Twelfth Street S.W.
The Portals
Washington, DC 20554

Re: CC Docket No. 96-262
CC Docket No. 94-1
CCB/CPD File No. 98-63

Dear Ms. Salas:

Enclosed for filing by ALLTEL Communications, Inc.(ACI) are an original and eight copies of its comments in the referenced proceedings. In this regard, it should be noted that ACI's comments relate to Section VIII.E of the Commission's Further Notice of Proposed Rulemaking.

Should there be any questions regarding this matter, please contact the undersigned counsel.

Sincerely,

Carolyn Hill

Carolyn C. Hill
Counsel for ACI
601 Pennsylvania Avenue N.W.
Suite 720
Washington, DC 20004

Enclosures
CC: Lawrence Strickling
Judy Boley
Virginia Huth
Jere Glover

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List ABCDE

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63

Comments of ALLTEL Communications, Inc.

ALLTEL Communications, Inc., on behalf of its competitive local exchange carrier affiliates (hereinafter collectively "ACI"), pursuant to the Commission's Further Notice of Proposed Rulemaking ("FNPRM"), hereby submits its comments in the referenced matter. ACI's comments address Section VIII.E of the FNPRM.

Introduction

The ACI competitive local exchange carriers (CLECs) have entered the local exchange and access service markets in Jacksonville, FL; Charlotte, NC; Little Rock, AR; and Omaha, NE. Our entry into these markets has not been without substantial challenges. However, the Commission's reliance--at least heretofore-- on marketplace solutions and its complaint process to consider any alleged anomalies in CLEC pricing or service has at least mitigated some of the post entry challenges that the ACI CLECs have encountered. Consequently, ACI regards the proposed rulemaking with considerable dismay and skepticism. The rulemaking, as further discussed below, should be terminated because

there is no record support that CLEC access rates are excessive or that the marketplace cannot regulate CLEC pricing. The Commission's focus with respect to CLECs should be on facilitating their market entry and expansion of their services and not on subjecting them, on the strength of demonstrated inaccuracies in AT&T's Petition for Declaratory Ruling or its self-help decision not to pay originating access, to regulatory policies developed for a monopoly environment.

Background

AT&T has had a continuing quarrel with ILEC access rates and now apparently with CLEC access rates. The most recent manifestation of that quarrel is the AT&T Petition for Declaratory Ruling filed on October 23, 1998. That petition requested a pronouncement by the Commission that an IXC could refuse to take access service from a CLEC if the IXC disagreed with the CLEC's rates. Grant of the relief requested would have had far reaching consequences in terms of the continued provision of telecommunications to various parts of the country. While the Commission has denied the petition, it apparently has embarked on the instant rulemaking on the basis of the allegations in that petition.

It is noteworthy that AT&T conceded in its petition that most CLECs offer competitively priced access services. (AT&T petition p.2). Nevertheless, it still requested a declaratory ruling from the Commission that existing law, policy and regulation does not require IXCs to purchase tariffed access services from CLECs.

In support of its request, AT&T sought to provide a comparison of interstate access rates of certain CLECs, including those of ACI, with those of incumbent ILECs in eighteen

states. CLECs, including ACI, challenged the basic accuracy of AT&T's data with respect to their individual access rates. They also challenged AT&T's attempt to compare their rates with those of ILECs in the first place and the compounding defect of failing to reflect differences in access rate structures between price cap ILECs and rate of return ILECs.

Despite this end run attempt by AT&T, ACI nevertheless indicated its willingness to continue its on-going access rate discussions with AT&T with the proviso that this not be interpreted as a concession that ACI can or should be required to charge the same access rates as the incumbent BOCs or any other ILEC in order to do business with AT&T or any other IXC.

The Commission's Regulatory Flexibility Analysis and Paperwork Burden Assessment are Incomplete

Before ACI responds to the Commission's request for comments on the various issues, it should be noted that there is a procedural defect in the Commission's Regulatory Flexibility Analysis ("Analysis") and Paperwork Burden Assessment that needs to be addressed. In paragraph 254 of the FNPRM, the Commission requests comments on whether it should link originating access rates to terminating access rates for both CLEC and ILECs. This linkage was suggested in Bell Atlantic's earlier filed comments on AT&T's petition, and it was proposed as a way to constrain terminating access rates of all carriers. Thereafter, in paragraph 255, the Commission requests comments on " whether to treat CLEC 'open end' originating minutes the same as CLEC terminating minutes for access charge purposes." However, the Commission's Analysis and Paperwork Burden Assessment do not fully consider the regulatory impacts of its proposals. For example, in

the Analysis, the Commission states that in rulemaking Section VIII.E, it "seeks to prevent **CLECs** from charging unreasonable rates for **terminating** access service." (emphasis added). (FNPRM at par. 269) Later, in the Analysis, the Commission states that "the proposals in Section VIII.E apply only to **competitive LECs**." (emphasis added). (Id. at par. 274). Finally, the Commission states that its proposals in Section VIII.E "will have no effect on the administrative burdens of competitive LECs because they would have no additional filing requirement. They would only be required to respond to complaints." (FNPRM at par.276). However, this ignores the potential effect of rules changes that could require CLECs to modify their tariffs or to eliminate those tariffs and negotiate individual contracts. The Commission has also failed to consider the additional filing and paperwork burdens that would be imposed on ILECs if they are required to modify their interstate access tariffs as well as to perform cost studies with respect to their interstate originating access rates. These assessments need to be made before the FCC considers any rule changes.

The Commission Should Continue to Rely on the Marketplace and Statutory Remedies to Address CLEC Terminating Access Rates

The Commission had extensive record support in its 1997 Access Charge Reform decision, 7CR1209 (1997), and in its decision in Hyperion Telecommunications, Inc., 8CR 730 (1997), for the adoption of non-dominant carrier regulation for CLECs and reliance on marketplace forces with respect to the CLECs' terminating access rates. Existing factual support for its decision to revisit now the issue of CLEC access rates is lacking. As discussed above, the data on selected CLEC terminating access rates in AT&T's petition was incorrect from the outset. Moreover, the Deputy Common Carrier Bureau's Chief's decision in MGC Communications, Inc., File No. EAD-99-002, DA 99-

1395, released July 16, 1999, did not involve a determination of the lawfulness of MGC's originating access rates, but the issue of whether AT&T's self-help steps to terminate its arrangements for the acceptance of originating access traffic should be allowed to stand or whether it should be required to pay MGC.

IXCs Have a Duty to Interconnect with CLECs

In the FNPRM, the Commission requests comment on whether any statutory or regulatory constraints prevent an IXC from declining a CLEC's access service. (FNPRM at par. 242.) ACI submits that there are both statutory and regulatory constraints that prevent an IXC from so proceeding. Specifically, Section 201 (a) of the Communications Act provides that " it shall be the duty of every common carrier engaged in interstate or foreign commerce ..to furnish such communication service [as it holds out to provide]...and [after opportunity for hearing, where the Commission finds it in the public interest] to establish physical connections with other carriers, to establish through routes and charges...and to establish and provide facilities and regulations for operating such through routes." (47 USC Section 201(a).) Also, Section 251(a) imposes a duty on telecommunications carriers, such as CLECs and IXCs, to interconnect directly with the facilities and equipment of other telecommunications carriers.

In this regard, IXCs, such as AT&T, and Sprint, are currently providing interstate communications services pursuant to their interstate common carrier tariffs. There is a holding out that requested interstate communications services covered by those tariffs will, in fact, be provided to subscribers in the communities covered by those tariffs. (There would be a similar holding out in services covered by contracts rather than filed

tariffs.) Pursuant to the requirements of Section 201(a), IXCs are required to interconnect with local exchange carriers, including ILECs and CLECs, when such interconnection is necessary for the IXCs to provide requested interstate communications service to their subscribers. The alternative to such interconnection would be for the IXCs to construct or lease their own local exchange facilities. However, IXCs are not permitted under the Communications Act to disrupt service to end users simply because they do not agree with the ILEC or CLEC access rate whether that rate is contained in an FCC filed tariff or in a contract. If there is a disagreement as to the rate the CLEC seeks to charge the IXC or if there is a disagreement as to the terms and conditions of the interconnection, the Act provides a remedy. That remedy is to file a complaint under Section 208. Under Section 208, an IXC can challenge the justness and reasonableness of the CLEC's rate or the terms and conditions of the interconnection arrangement. In turn, the CLEC is given an opportunity to rebut the IXC's allegations. Section 205 of the Act gives the Commission the authority to determine, based upon the particular fact situation, and after full opportunity for hearing, what will be the CLEC's just and reasonable charge or what will be a just and reasonable practice. As a result of this statutory process, the CLEC has the opportunity to demonstrate the reasonableness of its rate. The CLEC is not therefore held to an arbitrary standard of reasonableness as would result by an attempt to benchmark its rates to an ILEC's rates.

Access Rates Disputes Do Not Justify Disruption of End Users Service

The ability of an IXC to unilaterally decline a CLEC's access services because the IXC disagrees with the rate also raises the matter of compliance with the requirements of Section 214 of the Act as well as fundamental public policy issues. Section 214 of the

Act and Part 63 of the Commissions' Rules do not permit carriers to discontinue service to a community or parts of a community unless the carrier can demonstrate that the public interest convenience and necessity will not be adversely affected. Under this criteria, ALLTEL believes that an IXC would find it exceedingly difficult to justify the discontinuance of service to a community or part of a community on the basis of a rate dispute with a CLEC. Furthermore, the adoption of such a policy would eliminate the subscriber's right to terminate calls to anyone connected to the public switched network and would seriously undermine the ubiquity of the public switched network. This is not consistent with the competitive intent of the Congress in enacting the 96 Telecom Act nor with the duties imposed by the Communications Act on common carriers. Marketplace competition is the correct mechanism to determine the appropriate level of CLEC access rates with ultimate resort, if necessary, to existing statutory remedies.

Permissive Tariffing Should Continue To Be Allowed

The Commission also requests comment on whether mandatory detariffing of CLEC interstate access rates might address any market failure to constrain CLEC terminating access rates. (FNPRM at par. 246). ACI does not support the use of mandatory detariffing as a means to constrain CLEC terminating access rates. Rather, ACI believes the Commission should continue permissive tariffing. Under this approach, CLECs would be able to continue to provide their access services pursuant to either tariff or contract. Neither of these alternatives undermines the requirement of Section 201(b) that the CLEC's access rates are to be just and reasonable.

The right to file a tariff affords the CLEC the ability to enter the marketplace on a timely basis. It does not insulate the CLEC from legitimate challenges under Section 208 of the Act. Imposition of mandatory detariffing would create unnecessary barriers to entry for CLECs, reducing, in turn, the competition in the local exchange and access services markets that the 96 Act was designed to promote. While the Commission has questioned the efficacy of the "filed- rate doctrine" with respect to constraining CLEC access rates, the fact of the matter is that the "filed -rate doctrine" does not determine the reasonableness of CLEC access rates. That is the province of the FCC. Instead, the "filed -rate doctrine" provides that the rates in a carrier's tariff are those that it is required to charge.

Benchmarking Creates an Artificial and Arbitrary Means Against Which To Consider CLEC Rates

In various instances in the FNPRM, the Commission has stated its preference to rely on the marketplace with respect to CLEC access rates. (FNPRM paras. 238 and 256) Nevertheless, it has requested comment on various regulatory backstops to constrain CLEC access rates. One of its proposals would involve the use of benchmarks, such as ILEC terminating access rates, to evaluate the reasonableness of a CLEC's access rates.(Id. at par.247) ACI opposes this form of CLEC rate regulation. While facially benchmarking appears to be an expedient means of addressing IXC allegations, it does, in fact, create an artificial and arbitrary means against which to measure the justness and reasonableness of a particular CLEC's access rate. Because of this, ACI opposes the use of benchmarking.

In approaching the issue of CLEC access rates, the Commission should consider the David and Goliath nature of the players. The largest IXCs who continually demonstrate their ability to drive the market would have the Commission believe that the marketplace is incapable of constraining CLEC access rates. This flies in the face of reality. CLECs, are, in fact, subject to the market power wielded by IXCs, such as AT&T. Access is a critical product in the CLEC business model. It is therefore, contrary to a CLEC's sustainable economic viability to charge excessive access rates.

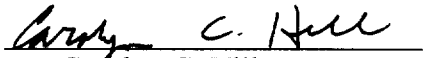
Further, the mantra of "excessive access rates" is one which has been enthusiastically embraced as purported justification for not paying all or any tariffed access rates of a CLEC with which an IXC does not agree. It is inconsistent with the development and growth of competition in the local exchange market for the IXC segment of the industry to unilaterally dictate the success or failure of existing CLECs through self-help remedies such as are currently being employed. The Commission should therefore re-emphasize that such self-help measures violate Commission regulations and policies and seriously undermine IXC credibility.

Conclusion

As set forth above, it has not been demonstrated that CLEC access rates are excessive. The marketplace can and will address the appropriateness of CLEC pricing. Consequently, there is no need for regulatory intervention where, as here, it would only serve to needlessly thwart the future development and continued growth of competition in the local exchange and access services markets.

Respectfully Submitted,

ALLTEL Communications, Inc.

By: 

Carolyn C. Hill
Its Attorney
601 Pennsylvania Ave., N.W.
Suite 720
Washington, DC 20004
(202) 783-3974

Dated: October 29, 1999